IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 715 OF 2004

IN

SUMMARY SUIT NO.1425 OF 1998

SICOM Limited ..... Plaintiffs
v/s.
Rajaram Bapusaheb
Suryavanshi and Ors. ..... Defendants

Prakash Punjabi for the plaintiffs.
Ms. N. Dulia i/b. Namneet and Co. for defendant nos.8, 11 and 12.
Ms. Madhavi Diwan i/b. Shah and Sanghavi for defendant nos.6 and 7.
S.A. Rajeshirke i/b. D.R. More for defendant nos.1 to 4, 9 and 10 and 14.

CORAM: S.U. KAMDAR, J.

DATE : 15TH FEBRUARY, 2005.

P.C. :

1. The present chamber summons has been taken out by the plaintiff financial institution to drop defendant nos.1 to 4, 9, 10 and 14 from the suit proceedings and for re-numbering of the defendants numbers in the suit title. They are also seeking

consequential amendments.

2. By prayer (b) of the chamber summons they are seeking to revise and reduce the claim because during the pendency of the suit the assets of the company are sold and the amounts realised are required to be given credit alongwith revised interest on the basis of revised computation. The plaintiff also seeks to reduce further the claim payable by the remaining defendants because they are supposed to give credit in respect of the amount they have received from the defendants which are sought to be deleted from the suit and who are also the guarantors. The present chamber summons is opposed by the remaining defendants who are also the guarantors in respect of the debt of the company. Learned counsels appearing for the defendant no.6 and 7 Ms. Madhavi Diwan and learned counsel for defendant nos.8, 11 and 12 Ms. Dulia have opposed the present chamber summons by contending that it is not permissible in law to delete some of the guarantors from the suit. It has also been contended that the plaintiffs are not entitled to

reduce and give adjustment of the amount realised by them from the sale of the assets of the company. The learned counsel for defendant nos.8, 11 and 12 has made an additional argument that the sale of the assets has been behind their back and further that the sale proceeds received is a true and correct price or not cannot be determined in absence of the defendants who are proposed to be deleted and therefore also the present chamber summons should not be granted. I do not see any merits in any of the contentions raised by the learned counsel for the remaining defendants in the suit. All the defendants are the guarantors. The liability of the guarantors is joint and several. If some of the guarantors have settled their claim in respect of their liabilities with the financial institutions they are at liberty and are entitled to do so. In the present case all the defendants proposed to be deleted have settled their claim by making certain payments. The plaintiff is willing to give credit for the said payment received from the guarantors as well as in respect of the amount which is received from the sale of the assets of the company by this

amendment. Thus liability if any of the remaining defendants in the suit is likely to be substantially reduced. I do not see in the aforesaid circumstances how the defendants who are remaining in the suit proceedings could be effected or their right can be prejudiced by permitting the defendants no.1 to 4 being deleted and or by permitting the plaintiff to give credit for the amount received in respect of sale of the assets and or amount received from other guarantors. In my opinion the plaintiffs who have received the amount is bound to and is required to give effect to the said receipt of the amount by appropriately altering the particulars of claim in the present suit because the decree cannot be passed for the amount which they have already received from sale proceeds as well as other guarantors. In so far as the contention of the learned counsel for defendant nos.8, 11 and 12 that the assets are sold at a much lesser price than ought to have been sold is concerned,in my opinion that issue can be agitated by them at the hearing of the suit which does not require the presence of the defendants prposed to be deleted and who are also

the guarantors. In view thereof I make the Chamber summons absolute in terms of prayer clause (a) to (c).

sd/-

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